

EXHIBIT B

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

In re ~~Sony~~SONY BMG CD Technologies
Litigation

No. 1:05-cv-09575-NRB

FINAL ORDER AND JUDGMENT

WHEREAS, SONY BMG Music Entertainment ("SONY BMG") markets and, directly and indirectly, including through retailers, sells, among other things, compact discs ("CDs") containing music from a wide variety of genres; and

WHEREAS, during the period beginning on August 1, 2003 ~~through~~through the present, some, but not all, of the CD titles marketed and sold by SONY BMG, contained, in addition to tracks of music, ~~copy protection~~ software (referred to herein as "Content Protection Software") that, when the CDs were inserted into computers with CD player/recorder drives, ~~contained~~ ~~certain copy protection features that~~ enable consumers to transfer the music to their computers, from which consumers could make other authorized uses (including transferring the music to portable devices and copying the music onto no more than ~~three~~three blank CDs) ~~("Copy Protection Software")~~, and which prohibit other uses; and

WHEREAS, SONY BMG used two types of ~~Copy~~Content Protection Software on CDs during the Class Period, "MediaMax" and "XCP"; and

22085153v4

WHEREAS, varioustwo versions of "MediaMax" — MediaMax 3.0 and MediaMax 5.0
— were designed and licensed to SONY BMG by SunnComm International Inc.
("SunnComm"), a Nevada corporation ~~incorporated in Nevada and~~

22085153v8

<u>Burt Bacharach</u>	<u>At This Time</u>
22085153v 8	<u>-2-</u>

headquartered in Arizona (Sunncomm International Inc. and another Nevada corporation headquartered in Arizona, MediaMax Technology Corp. being collectively referred to herein as "SunnComm"); and

WHEREAS, the MediaMax ~~versions~~software included on SONY BMG CDs ~~pressed~~sold to consumers during the Class Period will be referred to herein as the "MediaMax Software," and a SONY BMG CD or copy thereof containing MediaMax Software will be referred to herein as a "MediaMax CD"; and

WHEREAS, various versions of "XCP" were designed and licensed to SONY BMG by First 4 Internet Ltd. ("F4I," and, collectively with SONY BMG and SunnComm, the "Defendants"), a corporation located in and organized under the laws of the United Kingdom; and

WHEREAS, the XCP versions included on SONY BMG CDs sold to consumers during the Class Period will be referred to herein as the "XCP Software," and a SONY BMG CD or copy thereof containing XCP Software will be referred to herein as an "XCP CD"; and

WHEREAS, the following CD titles distributed by SONY BMG are XCP CDs:

~~[INSERT LIST OF XCP CDs]; and~~

<u>A Static Lullaby</u>	<u>Faso Latido</u>
<u>Acceptance</u>	<u>Phantoms</u>
<u>Amerie</u>	<u>Touch</u>
<u>Art Blakey</u>	<u>Drum Suit</u>
<u>The Bad Plus</u>	<u>Suspicious Activity?</u>
<u>Bette Midler</u>	<u>Sings the Peggy Lee Songbook</u>
<u>Billie Holiday</u>	<u>The Great American Songbook</u>
<u>Bob Brookmeyer</u>	<u>Bob Brookmeyer & Friends</u>
<u>Buddy Jewell</u>	<u>Times Like These</u>

Celine Dion	On Ne Change Pas
Chayanne	Cautivo
Chris Botti	To Love Again
The Coral	The Invisible Invasion
Cyndi Lauper	The Body Acoustic
The Dead 60's	The Dead 60's
Deniece Williams	This Is Niecy
Dexter Gordon	Manhattan Symphonie
Dion	The Essential Dion
Earl Scruggs	'Saw The Light With Some Help From My Friends
Elkiand	Golden
Emma Roberts	Unfabulous And More: Emma Roberts
Flatt & Scruggs	Foggy Mountain Jamboree
Frank Sinatra	The Great American Songbook
G3	Live In Tokyo
George Jones	My Very Special Guests
Gerry Mulligan	Jeru
Horace Silver	Silver's Blue
Jane Monheit	The Season
Jon Randall	Walking Among The Living
Life Of Agony	Broken Valley
Louis Armstrong	The Great American Songbook
Mary Mary	Mary Mary
Montgomery Gentry	Something To Be Proud Of: The Best of 1999-2005
Natasha Bedingfield	Unwritten
Neil Diamond	12 Songs
Nivea	Complicated

-3-

Our Lady Peace	Wealthy In Paranoid Times
Patty Loveless	Dreamin' My Dreams
Pete Seeger	The Essential Pete Seeger
Ray Charles	"riendship
Rosanne Cash	interiors
Rosanne Cash	king's Record Shop
Rosanne Cash	Seven Year Ache
Shel Silverstein	The Best Of Shel Silverstein
Shelly Fairchild	Ride
Susie Suh	Susie Suh
Switchfoot	Nothing Is Sound
Teena Marie	Robbery
Trey Anastasio	Shine
Van Zant	Get Right With The Man
Vivian Green	Vivian

WHEREAS, the following CD titles distributed by SONY BMG are MediaMax CDs containing MediaMax 3.0:

Anderson, Keith	Three Chord Country
Backstreet Boys	Never Gone (Walmart)
Backstreet Boys	Never Gone (Target)
Backstreet Boys	Never Gone
Brickman, Jim	Grace
Brickman, Jim	Grace (Provident Version)
Citizen Cope	Clarence Greenwood Recordings
Charlotte Martin	On Your Shore
Chieftains, The	Live From Dublin
Clay Aiken	Merry Christmas
Dave Matthews Band	Stand Up
Dido	"White Flag" W/Enhanced Features (Maxi Single)

22085153v8

4.

Foo Fighters	In Your Honor (Bb Version)
Foo Fighters	In Your Honor
40 Below Summer	The Mourning After
Hamilton, Anthoney	Coming From Where I'm From
J-Kwon	Hood Hop (Edited)
J-Kwon	Hood Hop (Ex)
Kasabian	Kasabian
Kings Of Leon	Aha Shake Heartbreak
Mclachlan, Sarah	'Fallen" W/Enhanced Features (Maxi Single)
Mclachlan, Sarah	Afterglow Live
Mclachlan, Sarah	Afterglow Live
Nodesha	Get It While It's Hot (Maxi Single)
Sahara Hotnights	Kiss & Tell
Silvertide	Show & Tell
Silvertide	Show & Tell (Ex)
Soundtrack	Xxx: State Of The Union
Soundtrack	Xxx: State Of The Union
Stone, Angie	Stone Love
Tha' Rayne	Didn't You Know (Maxi Single)
Velvet Revolver	Contraband (Bb Version)
Velvet Revolver	Contraband (Ed)
Velvet Revolver	Contraband (Ex)
Yung Wun	The Dirtiest Thirstiest (Ex)
Yung Wun	The Dirtiest Thirstiest
Various	Relaxation: A Windham Hill Collection

WHEREAS, the following CD titles distributed by SONY BMG are MediaMax CDs containing MediaMax 5.0:

[INSERT LIST OF MEDIAMAX CDs]; and

Alicia Keys	Unplugged
Amici Forever	Defined
Babyface	Grown & Sexy
Black Rebel Motorcycle Club	Howl
Britney Spears	Hitme - Remix
Cassidy	I'm A Hustla

Chris Brown	Chris Brown
Cook, Dixon & Young	Volume One
David Gray	Life In Slow Motion
Dido	Dido Live
Faithless	forever Faithless/ENH
Imogen Heap	Speak For Yourself
Judd & Maggie	Subjects
Leo Kottke/Mike Gordon	Sixty Six Steps
Maroon 5	Live
My Morning Jacket	Z
Raheem Devaughn	The Love Experience
Santana	All That I Am
Sarah McLachlan	Bloom (Remix Album)
Stellastarr*	Harmonies for the Haunted
Syleena Johnson	Chapter 3: The Flesh
T-Pain	Rappa Ternt Sanga
Various	So Amazing: An All Star Tribute To Luther Vandross
Various	Songs Brown Hotel
Wakefield	Which Side Are You On?
Charlie Wilson	Charlie, Last Name Wilson
YoungBloodZ	Everybody Know Me

WHEREAS, ~~five~~^{six} complaints—[Maletta v. SONY BMG Musk Entm't](#), No. 05 CV 10637 (UA) (S.D.N.Y. Dec. 19, 2005); [Ricciuti v. Sony SONY BMG Music Entm't](#), No. 05 CV 10190, consolidated as No. 05 CV 9609(~~NRB~~^{MRB}) (S.D.N.Y. Dec. 5, 2005); [Klewan v. Arista Holdings Inc. d/b/a Sony SONY BMG Music Entm 't](#), No. 05 CV 9575,⁹⁶⁰⁹ consolidated as No. 05 CV 9609⁹⁵⁷⁵ (NRB) (S.D.N.Y. Nov. 14, 2005); [Michaelson v. Sony SONY BMG Music, Inc.](#), No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); [Potter v. Sony SONY BMG Music Entm Y't](#), No. 05 CV 9607, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); [Rivas v. Sony SONY BMG Music Entm't](#), No. 05 CV 9598, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005)—were filed in the

~~22085153v4~~ ~~2~~ Southern District of New York and ~~have been consolidated~~^{are subject to} consolidation before the Honorable Naomi Reice Buchwald into the above-referenced SONY

BMG CD Technologies Litigation (the
"Action"); and
22085153v8

-6-

WHEREAS, a Consolidated Amended Complaint in the Action (hereafter, the "Complaint") was filed on [FILL IN DATE]December 28, 2005; and

WHEREAS, as of the date of this Settlement Agreement, other Complaintscomplaints raising substantially identical claims (collectively, the "Non-S.D.N.Y. Actions") have been filed in other jurisdictions as follows: Klemm Black v. Sony SONY BMG Music Entm't, No. CIV-05-1315 WDS/RLP (D. N.M. Dec. 19, 2005); Klemm v. SONY BMG Music Entm't, No. C 05 5111 BZ (N.D. Cal. Dec. 9, 2005); Melcon v. Sony SONY BMG Music Entm't, No. C 05 5084 MHP (N.D. Cal. Dec. 8, 2005); ~~Black v. Sony BMG Music Entm't No. CV 2005-09329 (N.M. 2d Jud. Dist. Ct. Dec. 7, 2005)~~; Ponting Porting v. SONYBMG Music Entm't, LLC, No. CV-05-08472-JFW(AJWx) (CD. Cal. Dec. 2, 2005); Jacoby v. Sony BMG SONYBMG Music Entm't, No. 05/116679 (N.Y. Sup. Ct. Nov. 30, 2005); Bahnmaier v. Sony BMG SONYBMG Music Entm't, No. CJ 2005 06968 (Okla. Dist. Ct. Nov. 28, 2005); Xanthakos Xcmthakos v. Sony SONY BMG Music Entm't, LLC, No. 05-0009203 (D.C. Super. Ct. Nov. 28, 2005); Maletta v. Sony BMG SONYBMG Music Entm't Corp., No. BC343615 (Cal. Super. Ct. Nov. 28, 2005); Burke v. Sony SONY BMG Music Entm't, No. 857213 (Cal. Super. Ct. Nov. 22, 2005); Hull v. Sony SONY BMG Music Entm't, No. BC343385 (Cal. Super. Ct. Nov. 21, 200521, 2005); Cooke v. Sony BMG v. SONYBMG Music Entm't, No. 05-0009093 (D.C. Super. Ct. Nov. 18, 2005); DeMarco v. Sony SONY BMG Music, No. 2:05-cv-05485-WHW-SDW (D.N.J. Nov. 17, 2005); Stynchula v. Sony Corp. of Am., No. BC343100 (Cal. Super. Ct. Nov. 15, 2005); Gruber v. Sony Corp. of Am., No. BC342805 (Cal. Super. Ct. Nov. 9, 2005); Guevara v. Sony SONY BMG Music Entm't, No. BC342359 (Cal. Super. Ct. Nov. 1, 2005); (although several of these actionsthe complaints in the Action and the Non-S.D.N.Y. Actions misstate the name of SONY BMG, it is understood that SONY BMG is the defendant meant to have been named in the Action and the Non-S.D.N.Y. Actionseach such complaint); and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that, when and if an XCP CD is inserted into a computer, an End User License Agreement (a

22085153v8

7

"EULA", and, with respect to XCP CDs, the "XCP EULA") appears automatically on the screen and the XCP Software installs itself on the user's computer; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions assert that the XCP Software contains a potentially harmful "rootkit" which renders the user's computer more vulnerable to "malware" promulgated by third parties, including "viruses," "Trojan Horses" and "spyware," than the computers would have been had the software not been installed; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the XCP Software interferes with the user's ability to access the music via non-XCP software, consumes excess computer resources and causes system errors; and

WHEREAS, the Complaint and the ~~Non-S.D.N.Y. Actions allege that SONY BMG also uses this software to collect information over the Internet from CD users, including Internet Protocol (IP) addresses; and~~ **WHEREAS**, the Complaint and complaints in the Non-S.D.N.Y. Actions allege that SONY BMG, including through the XCP EULA, misrepresented, or did not fully or adequately disclose, the true nature of the XCP Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the XCP EULA contained ~~terms~~tolls that are unconscionable or otherwise unenforceable; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that once installed, the XCP Software is difficult to locate and remove, and that SONY BMG did not make available a ready means to uninstall the XCP Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that when SONY BMG made an uninstaller program available to remove the XCP Software, this

program also created a security risk; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions **further**
~~claim that allege mat~~, when a MediaMax CD is inserted into a computer, a EULA ~~(the~~
~~"MediaMax EULA")~~ appears automatically on the screen (for CDs containing the MediaMax 3.0
software, the "MediaMax 3.0 EULA"; for CDs

22085153v8 _____ .g. _____

containing the MediaMax 5.0 software, the "MediaMax 5.0 EULA"; each, a "MediaMax EULA", and collectively, the "MediaMax EULAs"), and that certain software files are immediately loaded onto the computer even before the user of the MediaMax CD has an opportunity to accept or reject the MediaMax EULA, and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that this software remains on the computer even if the MediaMax EULA is rejected; and

WHEREAS, the Complaint and the ~~Non S.D.N.Y. Actions further allege that SONY BMG uses the MediaMax Software to collect computer information, including IP addresses; and~~ WHEREAS, the Complaint and the ^{complaints in the} Non-S.D.N.Y. Actions also allege that SONY BMG, including through the MediaMax ~~EULA~~EULAs, misrepresented, or did not fully or adequately disclose, the true nature of the MediaMax Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the MediaMax ~~EULA~~EULAs contained terms that are unconscionable or otherwise unenforceable; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that at least one version of MediaMax Software causes a file folder to be installed on a user's computer that renders the user's computer more vulnerable to security breaches by third parties by allowing these third parties to gain enhanced permissions over the user's computer running the Windows-~~System:~~operating system; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that SONY BMG did not make available a ready means to uninstall the MediaMax Software; and

~~22085153v4~~ 5.

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that when SONY BMG made a program available to uninstall the MediaMax Software, this ~~program~~program also created a security risk; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions claim that the DefendantsSONY BMG and F4I, by disseminating the XCP Software on XCP CDs, and that SONY BMG and SunnComm, by disseminating the Media Max software on Media Max CDs, violated,

22085153v8

9

among other things, the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, et seq.; the consumer fraud, false advertising, and/or deceptive trade practices laws of the several states, and state and federal common law; and

WHEREAS, the Complaint seeks injunctive relief, equitable relief, restitution, and damages on behalf of a nationwide class of consumers who ~~purchased~~used any of the MediaMax CDs and/or the XCP CDs; and

WHEREAS, the plaintiffs in the Non-S.D.N.Y. Actions seek essentially the same relief on behalf of a nationwide class or the residents of individual states; and

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation of the facts and analyzed the relevant legal issues, and ~~although Plaintiffs and their counsel~~ believe that the claims asserted in the ~~Complaints~~complaints have substantial merit, ~~they also~~ have examined the benefits to be obtained under the proposed ~~settlement~~Settlement, including the prompt removal of XCP CDs from the market, ~~and improvements in~~SONY BMG's ceasing production of the MediaMax software and in the testing of and disclosures regarding ~~MediaMax software~~future Content Protection Software, and have considered the risks, costs and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiffs or Defendants; and

WHEREAS, Defendants have conducted an investigation of the facts and analyzed the relevant legal issues; and

~~22085153v4~~ ~~6~~

~~WHEREAS, WHEREAS~~, Defendants deny all liability with respect to any and all facts or claims alleged in the ~~Complaints~~Complaint, and believe that their defenses to the claims asserted in the ~~Complaints~~Complaint have substantial merit; and

WHEREAS, Defendants also have weighed the potential risks, costs and delays associated with continued litigation of the Actions against the benefits of the proposed

Settlement; and

22085153v8 .10.

WHEREAS,